

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Writ Petition No. 270 (SS) of 2007

Padam Singh Chauhan,
aged about 54 years,
S/o Ram Sharan Singh,
Head Master,
Primary School Amiyawala
Block Jaspur,
District Udham Singh Nagar.

.....Petitioner

Versus

1. Additional District Education Officer (Basic), Udham Singh Nagar.
2. District Magistrate, Udham Singh Nagar.
3. District Education Officer, Udham Singh Nagar.
4. State of Uttarakhand through Secretary, Education.

.....Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Smt. Gaura Devi Dev, learned counsel for the petitioner and learned Standing Counsel State of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

- i. issue a writ, order or direction in the nature of Certiorari by quashing the transfer order dated 05.12.2006
- ii. Issue a writ, order of direction in the nature of Mandamus commanding the respondent to permit to continue as Headmaster in Primary School, Amiyawala, Block – Jaspur, District – Udham Singh Nagar.
- iii. Issue an interim order or direction by directing the respondents to permit the petitioner to continue as

Headmaster in Primary School, Amiyawala, Block-Jaspur, District – Udham Singh Nagar during the pendency of this writ petition and pay salary regularly.

- iv. Issue any other writ, order or direction, which in ends of the justice and in the circumstances of the case the Hon'ble Court may deem fit and proper.
- v. Award the cost of petition.

Vide order dated 5th December, 2006, the petitioner, who was working as Head Master, Primary School, Amiyawala, Block Jaspur, has been transferred to Primary School, Amritnagar II, Block Gadarpur by the Additional District Education Officer (Basic), Udham Singh Nagar.

The petitioner has challenged this transfer order on two grounds. First, the transfer order has been passed while code of conduct was enforced in the State of Uttarakhand due to Assembly Election. Second, the transfer order has been passed by the authority without applying his mind on the dictate of District Magistrate

The first ground that the transfer order has been passed during the course when the Code of Conduct was enforced, in view of Assembly Election in the State of Uttarakhand, has lost the relevancy because of the fact that now Code of Conduct is not in force. So far as the second ground is concerned, the same has force. There are catena of judgments wherein the Hon'ble Supreme Court has held that the transferring authority must pass order of transfer after applying his mind and not on the dictate of some other person.

From the perusal of the impugned order, it reveals that the Additional District Education Officer (Basic) has not applied

his mind and has passed the impugned order on the dictate of some other person.

Learned counsel for the petitioner has submitted that the person, who was transferred at the place of petitioner, has already been expired and the post of Head Master, Primary School, Amiyawala is still vacant and, in case, the transfer order is cancelled, nobody will be affected.

For the reasons recorded above, writ petition is allowed. Order dated 5th December, 2006 passed by Additional District Education Officer (Basic), Udham Singh Nagar is quashed. No order as to costs.

(M.M. Ghildiyal, J.)

29.03.2007

VKS

With this direction, writ petition as well as stay application is disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

June 13, 2007

SKSHARMA